



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24378665

Date: FEB. 9, 2023

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification under sections 101(a)(15)(T) and 214(o) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o), as a victim of human trafficking. The Director of the Vermont Service Center denied the application, concluding that the record did not establish that she was a victim of a severe form of trafficking in persons (trafficking), she is physically present in the United States on account of trafficking, and she has complied with any reasonable requests for assistance in the investigation or prosecution of trafficking. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as a T-1 nonimmigrant if they: are or have been a victim of a trafficking; are physically present in the United States on account of such trafficking; have complied with any reasonable requests for assistance in the investigation or prosecution of trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States. *See also* 8 C.F.R. § 214.11(b)(1)-(4) (reiterating the statutory eligibility criteria).

The term “severe form of trafficking in persons” is defined in 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a) as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” The definition of trafficking also includes “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years.” *Id.* Sex trafficking means the “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(12); 8 C.F.R. § 214.11(a).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, last entered the United States without inspection in 2000 and filed her T application in October 2020. The issues before us are whether the Applicant was a victim of trafficking, is physically present in the United States on account of trafficking, and has complied with any reasonable requests for assistance in the investigation or prosecution of trafficking.

A. The Applicant's Trafficking Claim

The Applicant explained that she worked at an apple packing factory. The record includes an employer letter reflecting she started working there in 2013. The Applicant mentioned that she was placed in the worst jobs despite having a doctor's note providing she should be on light work. Her supervisor, R-R-¹ did not care, and R-R- began to sexually harass her. R-R- bothered her a lot and stated he would be bad to her if she did not do what he wanted. Specifically, R-R- sent a nude photograph of himself to the Applicant, made her bend over to see her posterior, and made her bend over and straddled her back in front of other employees. The Applicant stated that she was afraid to do anything as she did not want to lose her job. R-R- also made her send him pictures of herself, he made her life miserable when she stopped doing this, and she was laid off after being put on a job she could not perform due to medical restrictions. Finally, the Applicant mentioned that she experiences anxiety and depression daily, and she feels worthless and thinks of dying.

B. The Applicant Has Not Established She Is a Victim of Trafficking

In denying the T application, the Director determined the Applicant did not establish she was a victim of trafficking. The Director reviewed the Applicant's trafficking claim, as described above, and acknowledged the evidence submitted by the Applicant with her T application and in response to a request for evidence. We incorporate that list of evidence into our decision. Specifically, the Director reviewed the Applicant's medical records and mental status examination, which detailed her elbow and wrist pain, chest pain, vertigo, emotional harm she experienced while working, and diagnoses of post-traumatic stress disorder, major depressive disorder, and generalized anxiety disorder. The Director also reviewed the Applicant's discrimination complaint with the Michigan Department of Civil Rights, which described her sexual harassment claim and was eventually dismissed for lack of sufficient evidence to proceed. Lastly, the Director reviewed letters of support from the Applicant's friends, neighbors, and co-workers which indicated she is a good role model, hardworking, and compassionate.

The Director determined the events described by the Applicant were a form of sexual harassment, which is unwanted conduct of a sexual nature which has the purpose or effect of violating someone's dignity, or creating an intimidating, hostile, degrading, humiliating, or offensive environment for them. However, the Applicant did not establish she was a victim of trafficking. Specifically, the Director noted the Applicant did not indicate she was forced to remain with her employer, rather she made a choice to stay due to fear of unemployment and her undocumented immigration status. Furthermore, the Director stated that the Applicant's compensation or employment was not provided in exchange for allowing R-R-'s behavior. As such, the totality of the evidence did not establish the

¹ We use initials to protect individual identities.

Applicant was recruited, harbored, transported, or obtained through the use of force, fraud, or coercion for the purpose of involuntary servitude or commercial sex trafficking.

On appeal, the Applicant contends that she was a victim of trafficking. First, the Applicant claims that she was a victim of labor trafficking. She asserts that she was obtained and retained by force and coercion for the purpose of labor and services, including the submission of nude photographs without pay. She states that her supervisor coerced her into providing nude photographs via threats to make her life miserable, she was retaliated against when she stopped sending photographs, she was placed in job duties that she could not perform due to medical restrictions, and she was forced out of her employment. The Applicant states she was unable to leave her employer due to the fear, threats, and coercion of her supervisor, and the coercive acts were a form of involuntary servitude. The Applicant also claims that the threats made were for the purpose of maintaining her as an unpaid slave. Second, the Applicant claims that she was a victim of sex trafficking, as R-R- recruited or obtained her, via his threats and position of power, for the purpose of a commercial sex act. The Applicant asserts that the commercial sex act was providing sexually explicit photographs to R-R- which held commercial value due to the potential to sell or trade them.

Based on a de novo review of the record, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director's decision provided a thorough analysis of the Applicant's trafficking claim and supporting evidence, as described above, and the Applicant's submission on appeal does not include any new evidence or arguments which would overcome the Director's findings. The Director correctly determined that the Applicant experienced sexual harassment, but she was not a victim of trafficking. Trafficking based on labor involves the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 8 C.F.R. § 214.11(a). As noted by the Director, the Applicant was not subjected to involuntary servitude, rather she voluntarily worked at the apple packing factory. In addition, the Applicant was not subjected to slavery, as she claims on appeal, which is defined as "a situation in which one person has absolute power over the life, fortune, or liberty of another." *Black's Law Dictionary* (B.A. Garner, ed.) (11th ed. 2019). The record does not establish that R-R- had absolute power over the life, fortune, or liberty of the Applicant.²

Next, the Applicant's claim that she was a victim of sex trafficking lacks merit, as the record does not establish she was recruited, harbored, transported, provided, obtained, patronized, or solicited for the purpose of a commercial sex act. The Director correctly determined that Applicant's compensation or employment was not provided in exchange for allowing R-R-'s behavior. As such, it was not a commercial sex act, which is defined in 8 C.F.R. § 214.11(a) as any sex act on account of which anything of value is given to or received by any person. Based on the foregoing, the Applicant has not established by a preponderance of evidence that she was victim of trafficking.

² We note that the Applicant did not make a claim of being subjected to peonage or debt bondage.

As the Applicant has not established that she was a victim of trafficking, she cannot establish that she is physically present in the United States on account of such trafficking or has complied with reasonable requests for assistance in the investigation or prosecution of trafficking. Accordingly, the Applicant is not eligible for T nonimmigrant classification.

ORDER: The appeal is dismissed.